TARGETED MARKET CONDUCT EXAMINATION REPORT
AS OF JULY 31, 2005

First Choice Title, LLC
5200 DTC Parkway Ste 160
Greenwood Village, CO 80111

EXAMINATION PERFORMED BY
DIVISION OF INSURANCE STAFF
COLORADO DEPARTMENT OF REGULATORY AGENCIES
STATE OF COLORADO

First Choice Title, LLC
5200 DTC Parkway Ste 160
Greenwood Village CO 80111

TARGETED MARKET CONDUCT EXAMINATION REPORT AS OF JULY 31, 2005

Examination Performed by
Paula M. Sisneros, AIS
Bobbie Baca
Cliff Hinson

Division of Insurance Staff

January 6, 2006

The Honorable David F. Rivera
Commissioner of Insurance
State of Colorado
1560 Broadway, Suite 850
Denver, Colorado 80202

Commissioner:

This targeted market conduct examination of First Choice Title, LLC was conducted pursuant to §§ 10-1-203, 10-2-804 and 10-3-1106, C.R.S., which authorizes the Insurance Commissioner to examine title insurance agents and agencies. We conducted interviews and examined the Agency's records at its Greenwood Village office located at 5200 DTC Parkway Ste 160, Greenwood Village, Colorado 80111. The market conduct examination covered selected business practices associated with the ownership and operation of a title insurance agency through July 31, 2005.

The following market conduct examiners respectfully submit the results of the examination.

Paula M. Sisneros, AIS

Bobbie Baca

Cliff Hinson

MARKET CONDUCT
EXAMINATION REPORT
OF
FIRST CHOICE TITLE, LLC

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AGENCY PROFILE

First Choice Title, LLC (First Choice or Agency) was established with the Office of the Secretary of State under the name Creative Title, LLC on November 7, 2003. The Agency registered the name change to First Choice Title, LLC with the Office of the Secretary of State on February 10, 2004. First Choice obtained a Colorado resident agency license for title insurance on March 22, 2004. Its license number is 182562 and the responsible producer as of July 31, 2005 was Douglas Farr. Two individuals, Franck Martin an unlicensed individual, and Douglas Farr, who holds Colorado resident producer license number 101962 and is authorized to conduct title insurance transactions, own First Choice. First Choice is an affiliated business arrangement.

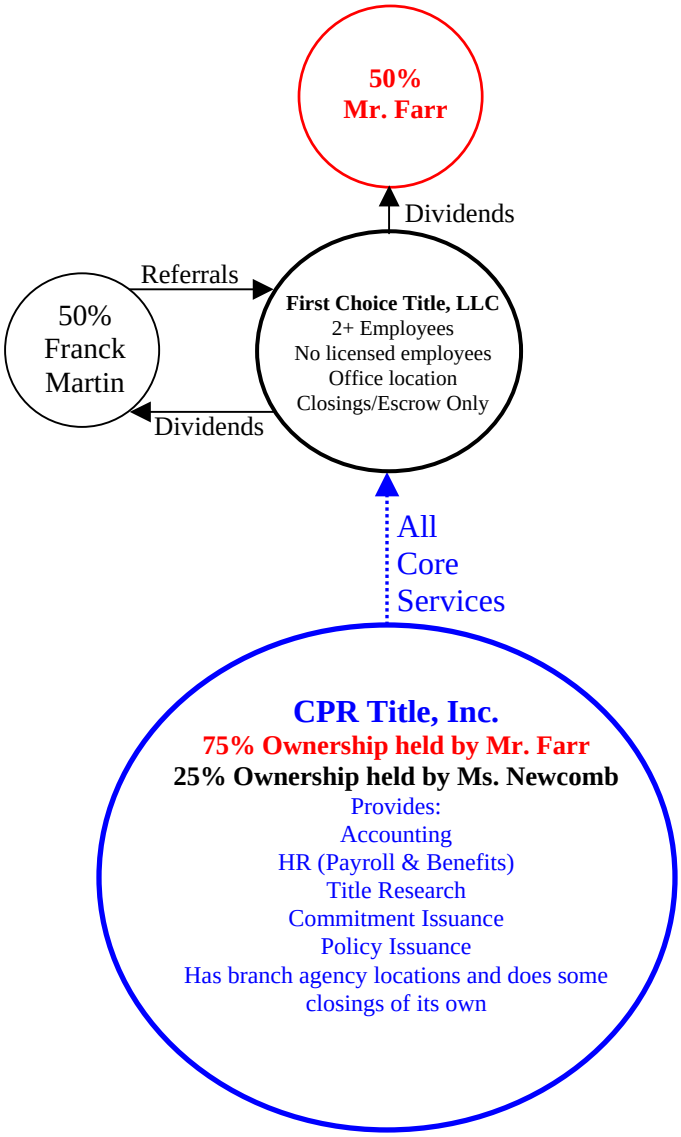
First Choice performs some closing and escrow services; however, CPR Title, Inc. provided the majority of First Choice's title services for a fee. Services provided included, but were not limited to, title search and examination, and commitment and policy issuance. Attorneys Title Guaranty Fund, Inc. or Dakota Homestead Title Insurance Company underwrote First Choice title files.

CPR Title, Inc. also provided accounting, human resource, payroll, benefit, and IT/ITS services to this affiliated agency.

The Colorado Commissioner of Insurance issued a summary suspension order on November 15, 2005, when the Division received information that an affiliated agency owned by Douglas Farr allegedly misappropriated escrow funds causing consumer harm. Given Mr. Farr's license was summarily suspended all affiliated agencies in which Mr. Farr is the responsible producer were also summarily suspended. To review the order, please visit the Division's website at www.dora.state.co.us/insurance.

* The Colorado Commissioner of Insurance issued a summary suspension order on November 15, 2005 listing Mr. Farr as a respondent. To review the order, please visit the Division's website at www.dora.state.co.us/insurance.

Affiliated Business Arrangement Flowchart*:



* This flowchart does not show all affiliated businesses and may not reflect all services that were provided and/or received.

PURPOSE AND SCOPE OF EXAMINATION

State market conduct examiners with the Colorado Division of Insurance (Division), in accordance with Colorado insurance law, §§ 10-1-201, 10-1-203, 10-1-204, 10-2-804 and 10-3-1106, C.R.S., which empowers the Commissioner to require any person engaged in the business of insurance to be examined, reviewed certain business practices of First Choice. The findings in this report, including all work products developed in producing it, are the sole property of the Division.

The purpose of the targeted examination was to determine the Agency's compliance with Colorado insurance law and with generally accepted operating principles related to title insurance agencies. This targeted examination was triggered by an investigation conducted by Division staff related to affiliated business arrangements. The preliminary findings from the investigation indicated a need for a more in-depth review of certain business practices to determine if the Agency was in compliance with Colorado insurance law. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

Examiners conducted the examination in accordance with procedures developed by the Division, based on model procedures developed by the National Association of Insurance Commissioners. They relied primarily on records and materials maintained by the Agency and affiliated businesses, and direct interviews with owners and staff of the Agency and affiliated businesses. Most of the documents reviewed during this examination were provided by the Agency in paper form; however, some electronic data was also provided. The targeted market conduct examination covered the period from the Agency's inception through July 31, 2005.

The examination included review of the following:

Agency Operations and Management

The final exam report is a report written by exception. References to additional practices, procedures, or files that did not contain improprieties, were omitted. For the period under examination, the examiners included statutory citations and regulatory references as they pertained to title insurance agencies.

Examination findings may result in administrative action by the Division. Examiners may not have discovered all unacceptable or non-complying practices of the Agency. Failure to identify specific Agency practices does not constitute acceptance of such practices. This report should not be construed to either endorse or discredit any title insurance agency or underwriter.

EXAMINERS' METHODOLOGY

The examiners reviewed the Agency's business practices to determine compliance with Colorado insurance laws and Colorado regulations. For this examination, special emphasis was given to the laws and regulations as shown in Exhibit 1.

Exhibit 1

Law/Regulation	Concerning
Sections 10-1-101 through 10-1-130	General Provisions
Section 10-1-203	Authority, Scope, and Scheduling of Examinations
Section 10-1-204	Conduct of Examinations
Section 10-2-704	Fiduciary Responsibilities
Section 10-2-804	Investigation by Commissioner
Sections 10-3-1101 through 10-3-1104.5	Unfair Competition - Deceptive Practices
Sections 10-11-101 through 10-11-123	Title Insurance Code of Colorado
Regulation 1-1-7	Market Conduct Record Retention
Regulation 1-1-8	Penalties and Timelines Concerning Division Inquiries and Document Requests
Regulation 1-2-1	Concerning Agent Fiduciary Responsibilities
Regulation 3-5-1	Title Insurance

EXAMINATION REPORT SUMMARY

The examination resulted in a total of three (3) findings in which the Agency did not appear to be in compliance with Colorado statutes and regulations. The following is a summary of the examiners' findings and recommendations.

Agency Operations and Management: The examiners identified three (3) areas of concern during the review of the Agency's operations and management

1. Failure, in some instances, to provide a timely and/or complete response to an examiner inquiry.
2. Failure to maintain a separate trust account to hold premiums to be remitted to the insurer.
3. Creating and operating an affiliated business arrangement as a means to obscure kickbacks in violation of Colorado insurance law.

A copy of the Agency's response, if applicable, can be obtained by contacting the Agency or the Division.

MARKET CONDUCT EXAMINATION REPORT

FACTUAL FINDINGS

FIRST CHOICE TITLE, LLC

AGENCY OPERATIONS AND MANAGEMENT FINDINGS

Issue 1: Failure, in some instances, to provide a timely and/or complete response to an examiner inquiry.

Regulation 1-1-8, effective June 2, 2003, and promulgated pursuant to §§ 1-1-109, 10-2-104, 10-3-109(3), and 10-16-109, C.R.S., states in part:

Section 4 Definitions

As used in this regulation:

. . . .

D. "Examination Request/Comment Form" means a request for information made during the course of a formal market conduct or financial examination under §§10-1-201 to 207, C.R.S., and includes: 1) A written request from the examiner for books, records, materials, information, or data necessary for examination of the company's operations; and 2) *A written comment form from the examiner which identifies concerns related to company actions and requires additional information or acknowledgement from the company*

. . . .

F. "Response" means all written information provided to the Division from the person to whom the inquiry is made.

. . . .

Section 5 Rules

A. Unless another time period is specified by the Division in writing, every person shall provide a *complete response* to Examination Request/Comment Forms within ten (10) calendar days from the date on the form.

. . . .

C. If additional time is required to respond to any Division inquiry, the person shall submit a request for an extension of time in writing to the Division employee or examiner making the inquiry. The request for an extension of time shall be made within the original response period established in this regulation, and shall state in detail the reasons necessitating the extension. Extensions are granted at the discretion of the Division for good cause shown. When a request for extension is granted, the person shall respond within the new time period granted. If an extension is not granted, the person shall respond within ten (10) calendar days of the notice that the extension was not granted, and is subject to the imposition of appropriate penalties from the original due date.

D. The Division will calculate the applicable time periods from the date of the correspondence from the Division to: 1) if the response is mailed, the postmark date on the response; 2) if the response is hand-delivered to the Division's offices, the date identified by the Division's date received stamp; 3) if the response is hand-delivered directly to Division staff, Division representatives or examiners off of Division premises, the date the staff, representative or examiner receives the response as acknowledged by the staff, representative or examiner; 4) if the response is transmitted electronically, the electronically recorded date; and 5) if the response is faxed, the date shown on the fax transmission sheet.

E. Failure to provide a response, or providing an incomplete response to Division inquiries at any point in the handling of a matter, including during the course of a financial or market conduct examination, subjects the person to immediate imposition of a minimum $500 fine per act or occurrence.

Colorado Division of Insurance Regulation 1-1-8 (emphasis added).

The examiners mailed comment forms 1-FCT and 2-FCT dated October 13, 2005. These comment forms were mailed certified, return receipt requested. Confirmation of delivery was received and is on record with the Division. The examiners received responses to comment forms 1-FCT and 2-FCT; however, the responses were not received within the required ten days. It appears that the Agency is in violation of Colorado insurance law in that it failed to respond to the comment forms in a timely manner and failed to request extensions of time to respond within the original response period. Additionally, the responses received were incomplete in that they did not substantially address the issues presented by the examiners. They contained no explanation and no supporting documentation, but rather a set of questions and accusations.

Recommendation No. 1:

Within thirty (30) days, the Agency should provide documentation demonstrating why it should not be considered in violation of Regulation 1-1-8. In the event the Agency is unable to show such proof, it should provide evidence to the Division that it has revised its procedures to ensure that complete and timely responses are received to all Division inquiries.

Issue 2: Failure to maintain a separate trust account to hold premiums to be remitted to the insurer.

Section 10-2-704, C.R.S., states:

> (1) (a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by such insurance producer in a fiduciary capacity. The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums.
>
> (b) All premiums received, less commissions if authorized, shall be remitted to the insurer or its agent entitled thereto on or before the contractual due date or, if there is no contractual due date, within forty-five days after receipt.
>
> . . . .
>
> (d) If any insurance producer has failed to account for any collected premium to the insurer to whom it is owing or to its agent entitled thereto for more than forty-five days after the contractual due date or, if there is no contractual due date, more than ninety days after receipt, the insurer or its agent shall promptly report such failure to the commissioner in writing.
>
> . . . .
>
> (3) No insurance producer under this article shall commingle premiums belonging to insurers and returned premiums belonging to insurers with the producer's personal funds or with any other funds except those directly connected with the producer's insurance business.

Regulation 1-2-1 promulgated under the authority of §§ 10-1-108(8), 10-1-109, 10-2-220 and 10-3-1110, C.R.S., states:

> III. RULE:
>
> A. No insurance premium or refund received by an insurance agent, broker or agency by reason of the application for, issuance or termination of any particular policy may be credited to any other obligation owed by the insured to such agent, broker, agency or other insurer unless specific written authorization has been obtained from the insured to so credit, or a blanket authorization has been obtained from the insured to handle all policies and obligations from one account.
>
> B. Upon receipt, the insurance producer must treat all premiums and returned premiums in a fiduciary capacity, including but not limited to the following:

1. *Upon receipt the insurance producer must treat all premiums and return premiums as trust funds and segregate them from his own funds*, and

2. the insurance producer must keep an accurate record of all fiduciary funds, and

3. the insurance producer *must not treat insurance premiums or returned premiums as a personal or business asset*, and

4. *the insurance producer's financial statement should not reflect fiduciary funds as an asset or as income to the insurance producer*, and

5. an insurance producer may not use fiduciary funds as collateral for a personal or business loan, but the insurance producer may receive interest on such funds and use as a compensation balance with the financial institution, and

6. *any deposit of such premium and returned premium funds into a bank or savings account must be into a separate insurance trust account until actually remitted to the insurer or person entitled thereto.* Such deposits will be subject to the uniform fiduciary's law as delineated in § 15-1-101, et seq, C.R.S.

Colorado Division of Insurance Regulation 1-2-1 (emphasis added).

The examiners conducted an interview of a staff member of First Choice Title, LLC on August 30, 2005. During this interview the examiners received information that appears to indicate that the Agency is not in compliance with Colorado insurance law in that it is not handling insurer premiums in a fiduciary capacity. Specifically, the Agency is or was transferring or depositing title policy premiums to the Agency operating account at disbursement instead of holding them in a trust capacity until they are remitted to the insurer.

Recommendation No. 2:

Within thirty (30) days, the Agency should provide documentation demonstrating why it should not be considered in violation of § 10-2-704, C.R.S. and Regulation 1-2-1. In the event the Agency is unable to show such proof, it should provide evidence to the Division that it has revised its procedures to ensure compliance with the cited laws, including opening a designated trust bank account to ensure that premiums being held for remittance to the insurer are held in a trust capacity as required by Colorado insurance law. It should also provide evidence that Agency personnel have reviewed section eight (8) of revised regulation 3-5-1.

Issue 3: Creating and operating an affiliated business arrangement as a means to obscure kickbacks in violation of Colorado insurance law.

Section 10-11-102(3), C.R.S, states:

> The "business of title insurance" means the making or proposing to make, as insurer, guarantor, or surety, of any contract or policy of title insurance; or the transacting or proposing to transact, as insurer, guarantor, or surety, any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance, and the performance of closing and settlement services by a title insurance company or title insurance agent in conjunction with the issuance of any contract or policy of title insurance.

Section 10-11-108, C.R.S., Title Insurance, Prohibitions, states:

> (1) A title insurance company or title insurance agent shall not:
>
> . . . .
>
> (c) Give or receive or attempt to give or receive remuneration in any form pursuant to any agreement or understanding, oral or otherwise, for the referral of title insurance business;
>
> (d) Give or receive or attempt to give or receive any portion or percentage of any charge made or received in connection with the business of title insurance if such charge is not for services actually rendered. For purposes of this article, "services actually rendered" shall include but not be limited to a reasonable examination of a title, including instruments of record, and a determination of insurability of such title in accordance with sound underwriting practices; "services actually rendered" shall not include the mere referral of title insurance business.

Regulation 3-5-1, promulgated under the authority of §§ 10-1-109, 10-3-1110, and 10-4-404(1), C.R.S., states:

> Section 3. Definitions
>
> . . . .
>
> B. "Affiliated business arrangements" mean various ownership arrangements that may exist between and among title entities and settlement producers. Affiliated business arrangements are distinct from controlled business arrangements which are defined by § 10-2-401(4), C.R.S.

. . . .

L. "Settlement producer" means any person engaged in the trade, business, occupation or profession of: 1) Buying or selling interests in real property; 2) making loans secured by interests in real property; 3) acting as agent, representative, attorney, or employee of a person who buys or sells any interest in real property or who lends or borrows money with such interest as security; or 4) an affiliate or associate of any of these. For purposes of this regulation, settlement producer is not to be confused with the term "insurance producer" or "producer" as those terms are defined in § 10-2-103(6), C.R.S.

. . . .

Section 5. Rules Regarding Standards Of Conduct For Title Insurance Entities

In addition to any and all acts which may be proscribed elsewhere in Title 10, no title entity shall pay, furnish, or agree to pay or furnish, either directly or indirectly, or through affiliates or associates, any commission or any part of the fees or charges or remuneration in any form, in connection with any past, present, or future title insurance business, any closing and settlement services or any other title insurance business except for services actually rendered, as defined in § 10-11-108(1)(d) and (2), C.R.S., to or on behalf of any of the following:

1. Any settlement producer;
2. Any owner or prospective owner, lessee or prospective lessee of real property or any interest in the real property;
3. Any obligee or prospective obligee of any obligation secured or to be secured either in whole or in part by real property or any interest in the real property; or,
4. Any person who is acting as or who is in the business of acting as agent, representative, attorney or employee of any of the persons described in 1, 2 or 3 above, or any other party to the instant transaction.

The factors the Division will consider when determining whether remuneration for the referral of title insurance business exists or will exist, include, but are not limited to:

a. whether the costs of any settlement producer is being or will be defrayed by the title entity's actions
b. whether the remuneration is being or will be given to a discrete settlement producer as opposed to a bona fide association of settlement producers;
c. whether a pattern or practice of referrals to the title entity exists or will exist; and
d. consideration of the advertising value of the remuneration to the title entity.

While it is expressly recognized that advertising, marketing, or maintenance and development of client relationships are bona fide business practices, Colorado law prohibits such expenditures when they are remuneration for the referral of title insurance business.

A. The following is a partial, but not all-inclusive, list of acts and practices which the Division considers per se unlawful inducements proscribed by § 10-11-108, C.R.S.:

1. Affiliated business arrangements which are tied to the referral of title insurance business. Section 10-11-108(1)(c), C.R.S. does not prohibit all ownership interests or affiliated business arrangements between and among title insurance entities and settlement producers. The Division will make determinations on a case-by-case basis…

. . . .

6. Paying for, furnishing, providing, subsidizing, waiving or offering to pay, furnish, provide, subsidize or waive, to or for any of the persons described above in this Section 5 all or any portion of the following:

. . . .

f. Salary, compensation or services, except for services actually rendered, including, but not limited to:

i. All or any part of the time or productive effort of any employee or affiliate of the title entity (e.g., office manager, escrow officer, secretary, clerk, messenger) to any settlement producer at less than the fair market value of the services;
ii. Compensation of a settlement producer or associate of a settlement producer;
iii. The salary or any part of the salary of a relative of any settlement producer which payment is in excess of the reasonable value of the work actually performed by such relative on behalf of the title entity; and
iv. Services by any settlement producer which services are required to be performed by such settlement producer in his or her professional capacity, and for which the settlement producer would not normally charge the title entity.

. . . .

17. Providing, or offering to provide, non-title insurance services (e.g. computerized bookkeeping, forms management, computer programming, or any similar benefit) to any settlement producer at less than the fair market value of the services.

. . . .

19. Advancing or paying into escrow, or offering to advance or pay into escrow, any of the title entity funds or "closing short", except as provided in Section 6.

The federal Real Estate Settlement Procedures Act, also known as RESPA, provides as follows:

For purposes of this chapter—

. . . .

(7) the term “affiliated business arrangement” means an arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider; . . . .

12 U.S.C. 27 § 2602 (2002).

(a) Business referrals

No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

(b) Splitting charges

No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

(c) Fees, salaries, compensation, or other payments

Nothing in this section shall be construed as prohibiting

. . . .

(4) affiliated business arrangements so long as

(A) a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with such referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred

(i) in the case of a face-to-face referral or a referral made in writing or by electronic media, at or before the time of the referral (and compliance with this requirement in such case may be evidenced by a notation in a written, electronic, or similar system of records maintained in the regular course of business);

(ii) in the case of a referral made by telephone, within 3 business days after the referral by telephone,(and in such case an abbreviated verbal disclosure of the existence of the arrangement and the fact that a written disclosure will be provided within 3 business days shall be made to the person being referred during the telephone referral); or

(iii) in the case of a referral by a lender (including a referral by a lender to an affiliated lender), at the time the estimates required under section 2604(c) of this title are provided (notwithstanding clause (i) or (ii)); and any required written receipt of such disclosure (without regard to the manner of the disclosure under clause (i), (ii), or (iii)) may be obtained at the closing or settlement (except that a person making a face-to-face referral who provides the written disclosure at or before the time of the referral shall attempt to obtain any required written receipt of such disclosure at such time and if the person being referred chooses not to acknowledge the receipt of the disclosure at that time, that fact shall be noted in the written, electronic, or similar system of records maintained in the regular course of business by the person making the referral),

(B) such person is not required to use any particular provider of settlement services, and

(C) the only thing of value that is received from the arrangement, other than the payments permitted under this subsection, is a return on the ownership interest or franchise relationship, or

. . . .

(d) Penalties for violations; joint and several liability; treble damages; actions for injunction by Secretary and by State officials; costs and attorney fees; construction of State laws

. . . .

(4) The Secretary, the Attorney General of any State, or the insurance commissioner of any State may bring an action to enjoin violations of this section.

. . . .

(6) No provision of State law or regulation that imposes more stringent limitations on affiliated business arrangements shall be construed as being inconsistent with this section.

12 U.S.C. 27 § 2607 (2002).

Federal regulations provide as follows:

(a) Section 8 violation. Any violation of this section is a violation of section 8 of RESPA (12 U.S.C. 2607) and is subject to enforcement as such under Sec. 3500.19.

(b) No referral fees. No person shall give and no person shall accept any fee, kickback or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving a federally related mortgage loan shall be referred to any person. Any referral of a settlement service is not a compensable service, except as set forth in Sec. 3500.14(g)(1). A company may not pay any other company or the employees of any other company for the referral of settlement service business.

(c) No split of charges except for actual services performed. No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed. A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section. The source of the payment does not determine whether or not a service is compensable. Nor may the prohibitions of this part be avoided by creating an arrangement wherein the purchaser of services splits the fee.

(d) Thing of value. This term is broadly defined in section 3(2) of RESPA (12 U.S.C. 2602(2)). It includes, without limitation, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation. The term ``payment'' is used throughout Secs. 3500.14 and 3500.15 as synonymous with the giving or receiving any ``thing of value'' and does not require transfer of money.

. . . .

(f) Referral.

(1) A referral includes any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service or business incident to or part of a settlement service when such person will pay for such settlement service or business incident thereto or pay charge attributable in whole or in part to such settlement service or business.

(2) A referral also occurs whenever a person paying for a settlement service or business incident thereto is required to use (see Sec. 3500.2, ``required use'') a particular provider of a settlement service or business incident thereto.

(g) Fees, salaries, compensation, or other payments.

. . . .

(2) The Department may investigate high prices to see if they are the result of a referral fee or a split of a fee. If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods actually performed or provided. These facts may be used as evidence of a violation of section 8 and may serve as a basis for a RESPA investigation. High prices standing alone are not proof of a RESPA violation. The value of a referral (i.e., the value of any additional business obtained thereby) is not to be taken into account in determining whether the payment exceeds the reasonable value of such goods, facilities or services. The fact that the transfer of the thing of value does not result in an increase in any charge made by the person giving the thing of value is irrelevant in determining whether the act is prohibited.

(3) Multiple services. When a person in a position to refer settlement service business, such as an attorney, mortgage lender, real estate broker or agent, or developer or builder, receives a payment for providing additional settlement services as part of a real estate transaction, such payment must be for services that are actual, necessary and distinct from the primary services provided by such person. For example, for an attorney of the buyer or seller to receive compensation as a title agent, the attorney must perform core title agent services (for which liability arises) separate from attorney services, including the evaluation of the title search to determine the insurability of the title, the clearance of underwriting objections, the actual issuance of the policy or policies on behalf of the title insurance company, and, where customary, issuance of the title commitment, and the conducting of the title search and closing.

. . . .

(h) Recordkeeping. Any documents provided pursuant to this section shall be retained for five (5) years from the date of execution.

(i) Appendix B of this part. Illustrations in appendix B of this part demonstrate some of the requirements of this section.

24 C.F.R. § 3500.14 (2004).

(a) General. An affiliated business arrangement is defined in section 3(7) of RESPA (12 U.S.C. 2602(7)).

(b) Violation and exemption. An affiliated business arrangement is not a violation of section 8 of RESPA (12 U.S.C. 2607) and of Sec. 3500.14 if the conditions set forth in this section are satisfied. Paragraph (b)(1) of this section shall not apply to the extent it is inconsistent with section 8(c)(4)(A) of RESPA (12 U.S.C. 2607(c)(4)(A)).

. . . .

(2) No person making a referral has required (as defined in Sec. 3500.2, ``required use'') any person to use any particular provider of settlement services or business incident thereto, except if such person is a lender, for requiring a buyer, borrower or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or except if such person is an attorney or law firm for arranging for issuance of a title insurance policy for a client, directly as agent or through a separate corporate title insurance agency that may be operated as an adjunct to the law practice of the attorney or law firm, as part of representation of that client in a real estate transaction.

24 C.F.R. § 3500.15 (2004).

The examiners conducted an interview of a staff member of First Choice Title, LLC on August 30, 2005. During the examination the examiners made the following observations:

- The agency was established with the minimum capital required by Colorado insurance law and based on observation appears to have capitalized in a manner typical in the industry.
- The Agency has some staff in its office, however it shared employees and/or contracted services out to CPR Title, Inc, an affiliated business.
- Owner Douglas P. Farr, who is also majority owner of CPR Title, Inc, an affiliated business, manages the Agency. Day to day hiring, firing and business matters appear to be under Mr. Farr's complete control.
- The Agency does have a separate office location, however it is located in the same building as Mr. Franck Martin's lending institution.
- The Agency conducts closing services in its office. The majority of the title services, title search and examination, commitment and policy issuance, and premium remittance were conducted by CPR Title, Inc., an affiliated business.

Based on these observations it appears that the Agency is not in compliance with Colorado insurance law. It did not perform core title or settlement services and is therefore not considered a legitimate title insurance agency. CPR Title, Inc., an affiliated business performed services such as title searches, examinations, and commitment and policy issuance. Additionally, First Choice 1) charged title insurance premiums for services that were actually being performed by CPR Title, Inc.; 2) was sharing employees with other affiliated businesses; 3) did not have a licensed insurance producer in its office; and 4) had contracted out multiple non-insurance services to CPR Title, Inc. The combined effect of this conduct indicates that First Choice was established as a means to obscure kickbacks to the owners/primary business referrers.

Recommendation No. 3:

Within thirty (30) days, the Agency should provide documentation demonstrating why it should not be considered in violation of §§ 10-11-102 and 10-11-108, C.R.S., Regulation 3-5-1, 24 U.S.C. 27 § 2607 (2002), 24 C.F.R. § 3500.14 (2004) and 24 C.F.R. § 3500.15 (2004). In the event the Agency is unable to show such proof, it should provide evidence to the Division that it has revised its agency structure and procedures to ensure that it is not in violation of the cited laws, including providing evidence that there are no shared employees, that there is a licensed title agent in the business location and that the agency is not collecting premiums for services being provided by an affiliated business or other entity, among other things.

SUMMARY OF ISSUES AND RECOMMENDATIONS

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Issue 2: Failure to maintain a separate trust account to hold premiums to be remitted to the insurer.	2	15
Issue 3: Creating and operating an affiliated business arrangement as a means to obscure kickbacks in violation of Colorado insurance law.	3	24

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